



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OFFICE OF THE
REGIONAL ADMINISTRATOR

JUN 13 2011

John Shively
Chief Executive Officer
Pebble Limited Partnership
302 C Street, Suite 604
Anchorage, Alaska 99503

Dear Mr. Shively:

In my letter of March 15, 2011, I requested that the Pebble Limited Partnership (PLP) share baseline environmental data and analysis that you have collected on the Bristol Bay watershed. This data will supplement our information and assist us in our evaluation of the current conditions of the watershed. A larger data set will make the watershed assessment we are conducting more thorough and accurate. In subsequent conversations, you indicated a willingness to share data with us, but expressed concerns that the data be maintained as confidential. You suggested that we provide you with our highest priorities for receiving data, as well as the circumstances under which this data can remain confidential. We appreciate your willingness to cooperate with us in this matter and are providing the following information about data priorities and data confidentiality.

Our technical team has indicated that the data which would be of most assistance to us is data on geochemistry in the watershed. Our second highest priority would be data related to abundance of salmon.

With regard to our ability to keep this data confidential, EPA is constrained by the Freedom of Information Act (FOIA) with what information it can protect from public disclosure. Basically, to ensure government accountability, any person has a right to federal agency records except to the extent that such records are protected by one of nine exemptions listed in FOIA. It seems that the only exemption that might apply to PLP's baseline environmental data and analysis is Exemption 4, which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." In order to protect the information, PLP will need to establish, among other things, that release of the information is likely to cause substantial harm to the competitive position of PLP, and that the data would not be customarily released by PLP to the public under other circumstances.

If you decide to assert a business confidentiality claim for part or all of the information you submit to us, PLP should consult EPA's regulations at 40 C. F. R. Part 2, Subpart B. Consistent with those regulations, PLP will want to attach to protected information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in the Part 2 regulations. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before

asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

It is important to note, however, that EPA has committed to an open and transparent process with the public and tribes, and that any data that EPA uses as a basis for our assessment will likely become publicly available as our watershed assessment will undergo outside scientific peer review. Therefore, it is likely that any data EPA receives which does not meet the requirements for confidentiality under our regulations and the FOIA will be used in the assessment and will be releasable to the public.

We would like to have a meeting with you and your staff to discuss these data requests and answer any questions you may have about how the data will be used in our assessment. Please contact Rick Parkin, EPA's Associate Director for the Office of Ecosystems, Tribal, and Public Affairs, and the Management Lead for the Bristol Bay Watershed Assessment project to schedule a discussion on this matter. Rick can be reached at (206)553-8574.

Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis J. McLerran", is written over a horizontal line.

Dennis J. McLerran
Regional Administrator